

[Waiver 1992-8]
W-92-36A

MEMORANDUM

September 9, 1992

TO: Neal Potter
County Executive

FROM: Jay L. Cohen, Chair
Montgomery County Ethics Commission

RE Request for Waiver

By memorandum dated June 30, 1992, you requested the Ethics Commission to advise you if you may accept an invitation by the United Nations Association, National Capital Area (UN Association) to sign a letter inviting County organizations and individuals to become co-sponsors of a public celebration of United Nations Day in October. If necessary, you have requested a waiver allowing you to sign letters requesting various organizations and individuals to sponsor the UN Day celebration.

The following background has been provided by you: According to the draft letters soliciting sponsorship of the UN Day celebration, the observance will be held in Rockville on County property. The letter indicates that the UN Day celebration is jointly sponsored by the Montgomery County Government and the UN Association. Organizations are asked to contribute \$15 or more to the UN Association to "help defray expenses." Individuals may become co-sponsors with a \$5 minimum contribution. The solicitation letter appears to be targeted toward public interest groups and religious organizations. You have stated that "few of the organizations receiving the letter will be businesses with a financial interest in County procurement or other governmental decisions." Finally, you have indicated that co-sponsoring the UN Day celebration promotes the humanitarian and peacemaking activities of the United Nations which is "very much in the best interest of the County and all of its citizens."

Section 19A-14¹ of the Montgomery County Public Ethics Law provides:

- (a) A public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not the use of prestige prohibited by this subsection.

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¹ Unless otherwise indicated, section references are to the Montgomery County Code (1984).

- (c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:
 - (1) Generally available to the public; or
 - (2) Authorized by a County law, regulation, or administrative procedure.

The Ethics Commission believes that your participation as County Executive in seeking sponsors for the UN Day celebration constitutes the use of the prestige of your office for the gain of another that is prohibited by Section 19A-14. In addition, the use of a County facility for the benefit of the UN Association is prohibited by Section 19A-14(c). Accordingly, a waiver is required in order for you to participate as County Executive in the solicitation to obtain sponsors for the UN Day celebration and to use a County facility to benefit the UN Association.

Section 19A-8 authorizes the Ethics Commission to grant a waiver from the prohibitions of Section 19A-14 if the Commission finds:

- (1) The best interest of the County would be served by granting the waiver;
- (2) The importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and
- (3) Granting the waiver will not give a public employee an unfair advantage over other members of the public.

In applying these criteria, the Ethics Commission finds the following factors persuasive:

1. The Commission agrees that promoting the humanitarian and peacemaking activities of the United Nations is in the best interest of the County and its citizens.
2. The request for a contribution to the UN Association to defray the expenses of the UN Day celebration is for a relatively nominal amount. Furthermore, the solicitation is not targeted toward entities that do business with the County. Accordingly, the Commission believes that there is virtually no potential for a conflict of interest to arise if this waiver is granted.
3. There appears to be no basis for concluding that granting this waiver will provide you with an unfair advantage over other members of the public.

Accordingly, the Commission grants you a waiver to sign the draft solicitation letters to obtain sponsors for the UN Day celebration and to hold the celebration on a County facility.

This letter confirms the oral advice already given to you by Commission staff. If you have any questions regarding this waiver, please contact the Commission.